

**REMARKS**

This is in response to the Office Action of July 13, 2005.

In the last paragraph of page 2, the Examiner advised regarding double patenting with regard to claims 11 and 12. Those claims have been cancelled.

In the second paragraph of page 3, the Examiner rejected claims 7 and 19 under 35 U.S.C.

§102(b) as being anticipated by Tien-Lai (GB 2 191 929 A). Claim 7 has been amended to clarify the scope of the invention as pertaining to topical pain treatments and the layering of an oil on the yeast and capsaicin mixture to receive capsaicin and volatile fermentation byproducts. Tien-Lai does not disclose the oil nor oil being layered over the fermentation mixture and is directed to a recipe for making bread.

Claim 19 has been cancelled. Claim 7 is deemed patentable.

In the fourth paragraph of page 3, the Examiner rejected claims 7 and 19 under 35 U.S.C. §102(b) as being anticipated by JP-08099813 A. For the same reasons discussed above, claim 7 is deemed patentable. JP-08099813 does not disclose oil being layered over the fermentation mixture.

In the first paragraph of page 4, the Examiner rejected claims 7-15, 18-34, 83-84, and 87 under 35 U.S.C. §103(a) as being unpatentable over Tien-Lai (GB 2 191 929 A), Flenø et al. (U.S. 5,972,642), and Todd (U.S. 6,74,687). For the reasons discussed above, Claim 7 is believed to be patentable. A combination of Tien-Lai, Flenø et al., and Todd would yield a modified baking recipe, not the present invention.

Claims 8, 20-34, 37, 83-84, and 87 are dependent on claim 7 and so are also believed to be patentable. Claims 9-19 have been cancelled.

In the second full paragraph of page 5, the Examiner rejected claims 7-15, 19-34, 84, and 87 under 35 U.S.C. §103(a) as being unpatentable over JP-08099813 A, in view of Flenø et al. (U.S. 5,972,642). For the reasons discussed above, Claim 7 is believed to be patentable. A combination of JP-08099813 A and Flenø et al. would yield a modified plant growth regulator, not the present invention. Claims 8, 20-34, 84, and 87 are dependent on claim 7 and so are also believed to be patentable.

If any issues remain, or if the Examiner believes that prosecution of this application might be expedited by discussion of the issues, the Examiner is cordially invited to telephone the undersigned attorney for Applicant at the telephone number listed below.

Given that more claims were cancelled than were added by amendment, it is believed that no additional fees are due. However, if and to the extent that any additional fees are required, authorization is given to charge payment of such additional fees, or credit any overpayment, to Deposit Acct. 13-4213.

Respectfully submitted,



Date: October 13, 2005      By:

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